

State: Medley Farm
County: 10.14
Date: _____

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
RALPH C. MEDLEY; CLYDE MEDLEY,)	CIVIL ACTION NO.
GRACE MEDLEY AND BARRY MEDLEY,)	
INDIVIDUALLY AND d/b/a)	
MEDLEY'S CONCRETE WORKS;)	
MILLIKEN AND COMPANY;)	
UNISPHERE CHEMICAL CORPORATION;)	
NATIONAL STARCH AND CHEMICAL)	
CORPORATION,)	
)	
Defendants.)	

COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

PRELIMINARY STATEMENT

1. This is a civil action brought pursuant to Sections 104(a) and (b) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9604(a) and (b) and 9607(a) for recovery of

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costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances from a facility located on County Road 72 (Burnt Gin Road) near Gaffney, Cherokee County, South Carolina (hereinafter "Medley Farm Site" or the "Site"). The action is also brought pursuant to 28 U.S.C. § 2201 for declaratory relief entitling the United States to recover all future response costs incurred in connection with the Medley Farm Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1345, 2201 and 42 U.S.C. §§ 9607(a) and 9613(b).

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b), 2201, as the release or threatened release of hazardous substances that gave rise to this claim occurred in this district and the Medley Farm Site is located in this district.

DEFENDANTS

4. Defendant Ralph Medley is and was at all times relevant hereto the owner of the Medley Farm Site and was, at the time of disposal of hazardous substances at the Site, the owner and/or operator of that facility.

5. Defendants Clyde Medley, Grace Medley and Barry Medley individually and d/b/a Medley's Concrete Works each actively participated in, managed, supervised, or were otherwise involved in the operations at the Medley Farm Site, and, at the

time of disposal of hazardous substances at the Site, were operators of the Medley Farm Site. On information and belief, Medley's Concrete Works is and was at all times relevant hereto an unincorporated sole proprietorship or partnership which conducts business in this judicial district.

6. Defendant Milliken Chemical Company (formerly Sylvan Chemical Corporation and hereafter "Milliken") is a division of Milliken and Company, a Delaware corporation, qualified to do business in the State of South Carolina as a foreign corporation.

7. Defendant Unisphere Chemical Corporation (hereafter "Unisphere") is a wholly owned subsidiary of ORO Enterprises, Inc. Unisphere is incorporated in the State of South Carolina.

8. Defendant National Starch and Chemical Corporation (formerly Charles S. Tanner Company and hereafter "National Starch") is a Delaware corporation which is qualified to do business in the State of South Carolina as a foreign corporation. National Starch is a wholly owned subsidiary of Unilever United States, Inc.

9. Defendants Milliken, Unisphere and National Starch, are and were at all times relevant hereto generators of hazardous substances. Each by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances

owned or possessed by such person or corporate defendants, at the Medley Farm Site a facility owned or operated by parties other than these corporate defendants, from which there was a release or threatened release of hazardous substances which caused the incurrence of response costs.

10. Each defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(a).

GENERAL ALLEGATIONS

11. The Medley Farm Site (also known as the Burnt Gin Site) is and was at all times relevant hereto a hazardous waste disposal facility. The site contained a drum disposal area and six small lagoons.

12. From the mid 1960's until approximately 1977, defendant Ralph Medley owned and defendants Ralph Medley, Clyde Medley, Grace Medley and Barry Medley, individually and d/b/a Medley's Concrete Works, operated a waste disposal facility on the Medley Farm Site. As a result of those operations, unknown quantities of liquid waste and more than 5300 fifty-five (55) gallon drums and fifteen (15) gallon containers of waste, all or most of which came from defendants National Starch, Milliken, and Unisphere, were disposed of at the site. The drums and unknown quantities of liquid waste disposed of in the lagoons on-site contained chemical materials, including substances considered

hazardous under CERCLA. The operators of the site rolled the drums out of trucks without a ramp, causing many drums to rupture. As a result of the drum disposal and the disposal of liquid waste in lagoons on-site, the site's surface became contaminated with hazardous substances, and those substances leached down through the site's surface to contaminate the groundwater.

Sampling and analysis of the surface water, site soil, well water from neighboring wells, and groundwater revealed the presence of various toxic organic compounds or hazardous substances including, but not limited to, benzene, methylene chloride, vinyl chloride, tetrachlorethylene, phenol, toluene, trichlorethylene, 1, 2-dichloroethane and polychlorinated biphenyls (PCBs). Each of the above named substances is a hazardous substance pursuant to and as defined by Section § 101(14) of CERCLA.

The Medley Farm Site is situated in a residential and agricultural area in near proximity to both residential wells and Jones Creek.

13. In May and June of 1983, investigations by the EPA and the South Carolina Department of Health and Environmental Control ("SCDHEC") documented the presence of significant levels of hazardous substances at the site.

14. In response to the release or threatened release of hazardous substances into the environment at the site, on June 20, 1983, EPA, through its contractors, initiated response measures at the site to reduce or eliminate the hazards presented thereby. A substantial quantity of contaminated soil and solid

waste (2132 cubic yards) was excavated and disposed of and approximately 24,000 gallons of liquid waste were removed and shipped to an approved hazardous waste facility. Cleanup of the site was completed on July 21, 1983.

15. Expenditures or costs incurred to date in this removal action by the United States are in excess of \$570,000. These expenditures include the cost of response, cleanup, removal and disposal of the materials and hazardous substances at the Medley Farm Site. The United States may incur additional response costs in the future.

16. Defendants are jointly and severally liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for this amount as well as all other administrative, investigative, and legal expenses incurred or to be incurred by the federal government relative to the Medley Farm Site. The United States is continuing to incur further costs, including enforcement expenditures, to recover amounts of money it has expended at the site.

CLAIM FOR RELIEF

17. The allegations of Paragraphs 1 through 16 above are incorporated by reference as if fully alleged below.

18. Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), in pertinent part provides:

(a)(1) Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment the President is authorized to act, consistent with the national contingency plan, to remove

or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat or release emanates, or by any other responsible party.

* * *

(b) Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substance, pollutants or contaminants involved, and the extent of danger to the public health or welfare or the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

18. Authority under Section 104 has been delegated to EPA pursuant to Exec. Order No. 12316, 46 Fed. Reg. 42237 (August 14, 1981) and Exec. Order No. 12286, 46 Fed. Reg. 9901 (January 19, 1981).

20. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),
in pertinent part provides:

(a) Notwithstanding any other provision or
rule of law, and subject only to the defenses
set forth in subsection (b) of this section --

(1) the owner and operator of . . . a
facility, (2) any person who at the time
of disposal of any hazardous substance
owned or operated any facility at which
such hazardous substances were disposed
of, (3) any person who by contact, agree-
ment or otherwise arranged for disposal
or treatment, or arranged with a transporter
for transport for disposal or treatment
of hazardous substances owned or possessed
by such person by any other party or
entity, at any facility owned or operated
by another party or entity and containing
such hazardous substances . . . from which
there is a release, or a threatened release
which causes the incurrence of response
costs, of a hazardous substance, shall be
liable for --

(A) all costs of removal or remedial
action incurred by the United States
Government or a state not inconsistent
with the national contingency plan; . . .

21. The term "hazardous substance" is defined in
Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), in pertinent
part as:

(A) any substance designated pursuant to Section
311(b)(2)(A) of the Federal Water Pollution Control
Act, . . . (B) any element, compound mixture,
solution or substance designated pursuant to
Section 9602 of this title, (C) any hazardous waste
having the characteristics identified under or
listed pursuant to Section 3001 of the Solid Waste
Disposal Act (but not including any waste the
regulation of which under the Solid Waste Disposal
Act has been suspended by Act of Congress),

(D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance of mixture with respect to which the Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act.

22. The term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), in pertinent part as:

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

23. The term "facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), as:

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

24. The term "disposal", as defined in Section 101(29) of CERCLA, 42 U.S.C. § 9601(29), has the same meaning as provided in Section 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903, which states:

(3) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

25. The Medley Farm Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were, at all times relevant hereto, delivered to and stored, treated or disposed of at the Medley Farm Site.

27. At all times relevant hereto, there were releases or threatened releases of hazardous substances into the environment at the Medley Farm Site within the meaning of Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

28. The United States has incurred costs for actions taken in response to the release or threat of release of hazardous substances from the Medley Farm Site.

29. The United States' response actions taken at the Medley Farm Site and the costs incurred incident thereto were not inconsistent with the National Contingency Plan.

30. The United States has satisfied any condition precedent to the undertaking of response actions, the incurrence of response costs, and to the recovery of those costs under Section 107 of CERCLA, 42 U.S.C. § 9607.

31. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), each of the defendants is jointly and severally liable to the United States for all costs of response actions incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances from the Medley Farm Site.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this Court:

1. Enter judgment against the defendants, jointly and severally, in favor of the United States for all costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances at the Medley Farm Site, plus interest, which costs are now in excess of \$570,000.00;
2. Enter declaratory judgment, pursuant to 28 U.S.C. § 2201, that the defendants are jointly and severally liable for such additional response costs, plus interest, as may be incurred in the future by the United States pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. § 9604 and 9607, in connection with the Medley Farm Site;
3. Award the United States costs, including the costs of bringing this enforcement action, attorneys' fees and expenses; and
4. Grant such other and further relief as it deems appropriate.

Respectfully submitted,



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